



CALIFORNIA STATE PERSONNEL BOARD MEETING

801 Capitol Mall
Sacramento, California

Public Session Location –

**The Westin Los Angeles Airport Hotel
5400 West Century Boulevard
Midway Room
Los Angeles, CA 90045**

Teleconference – 320 West 4th Street
Los Angeles, California, Suite 620

Closed Session Location –

**The Westin Los Angeles Airport Hotel
5400 West Century Boulevard
Midway Room
Los Angeles, CA 90045**

Teleconference – 320 West 4th Street
Los Angeles, California, Suite 620

SUMMARY MINUTES – AUGUST 30, 2005

FULL BOARD SUMMARY MINUTES¹

AUGUST 30, 2005

CLOSED SESSION OF THE STATE PERSONNEL BOARD

1. EMPLOYEE PERSONNEL MATTER, PART III

Deliberation to consider the appointment, employment, evaluation of performance or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. [Government Code Section 11126(a)(1).]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

2. ROLL CALL

Members present:

William Elkins, President
Maeley Tom, Vice President
Ron Alvarado, Member
Sean Harrigan, Member
Anne Sheehan, Member

3. REPORT OF THE EXECUTIVE OFFICER – Floyd D. Shimomura

A. The budget situation for the current year is tighter than last year. There is not much "cushion" since we started the fiscal year with most positions filled. The staff will be giving the Board a full report at the October meeting and also discuss proposed BCPs for next fiscal year.

B. We received "positive feedback" on last month's SPB Board meeting at the CPS headquarters. The meeting helped to remind both the Board and the CPS staff that CPS administers the court interpreter program and the merit service systems program on behalf of the SPB.

C. The Board changed the Oct. 4-5 meeting date to Oct. 3 in light of a major Jewish holiday. Also, the SPB's anniversary celebration has been postponed until the spring.

¹ The Minutes for the Board can be obtained at the following internet address:
<http://www.spb.ca.gov/calendar.htm>

D. Human Resource Metrics Conference has been organized by Karen Coffee of the SPB and will take place on Sept. 8, 2005. Distinguished speakers from around the country will attend and over 100 people have already pre-registered.

E. The November meeting will be the Board's annual "planning session" and will be held in San Diego.

**4. REPORT ON THE PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)
– Ron Alvarado**

Member Ron Alvarado gave a brief report on recent activities of the Public Employees Retirement System.

5. REPORT OF THE CHIEF COUNSEL – Elise Rose

Litigation:

- SPB v. DPA/CDF Firefighters/IUOE/CSEA - Oral argument before Supreme Court scheduled for 9/13/05 at 9:00 a.m. in San Francisco.
- McCollum v. State - State Personnel Board served last week. Motion for Summary Judgment scheduled for 10/07/05 in federal court.
- Carpenter's Local 46 v. DGS, et al. - New lawsuit by union against several state agencies. SPB served last week. Plaintiff contends bidding for jobs of installation, modification, construction and moving of modular furniture is being split to avoid state's obligation under Public Contract Code to let certain projects for bidding and to avoid paying workers prevailing wage.
- SEIU, Local 1000 v. Office of State Printing (OSP), DGS (SPB as real party in interest) - Plaintiff claims OSP and DGS are violating Article VII of the constitution by illegally contracting out (without SPB review) in reliance on unconstitutional statute which declares that state printing services are not personal services contracts.

Other:

- ALJ's to attend training by National Employment Law Institute on Fair Employment and Housing Act law on disability discrimination.
- SPB Staff attended DPA's Respondent's Counsel Roundtable to brief state agency counsel on proposed whistleblower regulations.
- SPB Council of Counsels met for legal update and to discuss proposed whistleblower and discovery regulations

- Chief Counsel Elise Rose attended State and Consumer Services Agency Chief Counsel meeting. (Board briefed on subject matter of meeting.)
- Unit 2 bargaining unit (CASE is exclusive representative for state attorneys and judges) and DPA near impasse.
- New hire - Staff Counsel Stephanie Ramirez-Ridgeway to begin October 3.

6. NEW BUSINESS

NONE

7. REPORT ON LEGISLATION – Sherry Hicks

- **AB 297 (Yee)** has reached the Governor's desk.
- **AB 124 (Dymally)** has passed to the Senate floor.
- We are currently working on legislative proposals for next year. We will present our proposals to the Board at the October meeting.

8. PROPOSED REVISIONS TO WHISTLEBLOWER RETALIATION COMPLAINT REGULATIONS (Title 2, C.C.R., section 56 et. seq.)

Speakers:

Bruce Monfross, California State Personnel Board
Mary Fernandez, California State Personnel Board
Floyd Shimomura, California State Personnel Board
Elise Rose, California State Personnel Board

ACTION: NOTED

9. PROPOSED REVISIONS TO DISCOVERY REGULATIONS (Title 2, C.C.R., section 57 et. seq.)

Speakers:

Bruce Monfross, California State Personnel Board
Floyd Shimomura, California State Personnel Board
Elise Rose, California State Personnel Board

ACTION: NOTED

CLOSED SESSION OF THE STATE PERSONNEL BOARD

10. DELIBERATION ON ADVERSE ACTIONS, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by administrative law judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

11. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial. [Government Code sections 11126(e)(1) and 18653.]

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court,
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

SEIU Local 1000 (CSEA) v. State Personnel Board,
Sacramento Superior Court No. 05CS00374.

The Copley Press, Inc. v. San Diego Superior Court,
California Supreme Court No. S128603.

Union of American Physicians and Dentists v. Department of Corrections, et al.,
United States District Court, Northern District of California.

12. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

13. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor.
[Government Code section 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

14. ORAL ARGUMENT

Oral argument in the matter of **PERSONAL SERVICES CONTRACT: IUOE - CA SCIENCE CENTER, CASE NO. 04-0813A.** Review of personal services contract for maintenance and grounds keeping. California Science Center.

Persons Participating:

Barrett McInerney, Labor Relations Counsel, representing the California Science Center.

David Myers, Attorney, representing International Union of Operating Engineers.

ACTION: SUBMITTED

15. ORAL ARGUMENT

Oral argument in the matter of **JOSEPH MARTINEZ, CASE NO. 04-2690A.** Appeal from dismissal. Hospital Peace Officer. Department of Mental Health.

Persons Participating:

Joan Branin, Counsel, representing the Department of Mental Health.

Kimberly Daniels, Counsel, representing appellant.

ACTION: SUBMITTED

CLOSED SESSION OF THE STATE PERSONNEL BOARD

16. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND OTHER APPEALS

Deliberations to consider matter submitted at prior hearing.
[Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

17. ORAL ARGUMENT

Oral argument in the matter of **ANDREW RUIZ, CASE NO. 04-2391A.**
Appeal from dismissal. Correctional Lieutenant. Department of Corrections.

Persons Participating:

Steve Jennings, Staff Counsel, representing the Department of Corrections.
Michael Lackie, Attorney, representing appellant.

ACTION: SUBMITTED

CLOSED SESSION OF THE STATE PERSONNEL BOARD

**18. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, AND
OTHER APPEALS**

Deliberations to consider matter submitted at prior hearing.
[Government Code Sections 11126(d), 18653.]

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

**19. DISCUSSION OF COMING BOARD MEETING SCHEDULE OF
SEPTEMBER 20, 2005, IN SACRAMENTO, CALIFORNIA**

NONE

**20. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES OF
JULY 26, 2005**

ACTION: ADOPTED

21. EVIDENTIARY CASES - (See Case Listings on Page 11-19)

**22. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE
SECTION 18671.1 EXTENSION - (See Minutes Page 27-28)**

ACTION: ADOPTED

23. NON-EVIDENTIARY CASES - (See Case Listings on Page 20-24)

24. NON-HEARING CALENDAR

Proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff.

NONE

25. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

26. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS CURRENTLY UNDER CONSIDERATION

CHIEF, MENTAL HEALTH EDUCATION AND TRAINING BRANCH

The Department of Mental Health proposes to allocate the above position to the CEA category. The Chief, Mental Health Education and Training is responsible for implementation of the education and training component of the Mental Health Services Act (MHSA).

DEPUTY DIRECTOR, OPERATIONS DIVISION

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Deputy Director, Operations Division is responsible for ensuring the efficient and effective operation of the collections and customer service programs of the Department's Operations Division.

DEPUTY DIRECTOR, COMPLIANCE DIVISION

The California Gambling Control Commission proposes to allocate the above position to the CEA category. The Deputy Director, Compliance Division, administers the compliance activities of the California Gambling Control Commission, manages the field testing of electronic gaming devices, oversees the fiduciary responsibilities associated with the Indian Gaming Revenue Sharing Trust Fund, the Indian Gaming Special Distribution Fund and tribal gaming revenues that are deposited into the General Fund.

ASSISTANT CHIEF COUNSEL, OFFICE OF THE DIRECTOR, LEGAL UNIT, SAN FRANCISCO/SACRAMENTO
ASSISTANT CHIEF COUNSEL, OFFICE OF THE DIRECTOR, LEGAL UNIT, LOS ANGELES

The Department of Industrial Relations proposes to allocate the above positions to the CEA category. The Assistant Chief Counsel positions in the Office of the Director-Legal Unit are responsible for developing departmental policies on a broad range of legal and non-legal issues facing the department including but not limited to public works matters, prevailing wage enforcement, civil rights in the areas of discrimination and labor and employment matters, and workers compensation.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW OR REVISE EXISTING CEA POSITIONS

CHIEF, FINANCIAL MANAGEMENT BRANCH

The Department of Industrial Relation's proposal to allocate the above position to the CEA category has been disapproved effective July 29, 2005.

CHIEF, PUBLIC PARTICIPATION PROGRAM

The State Water Resources Control Board's proposal to allocate the above position to the CEA category has been disapproved effective July 29, 2005.

VICE PRESIDENT, OPERATIONAL MANAGER, NORTHERN DISTRICTS

VICE PRESIDENT, OPERATIONAL MANAGER, SOUTHERN DISTRICTS

The State Compensation Insurance Fund's proposal to allocate the above positions to the CEA category has been approved effective July 29, 2005.

CHIEF, ENTERPRISE POLICY AND STRATEGIC PLANNING OFFICE

The Department of Water Resource's proposal to establish the above position to the CEA category has been approved effective July 29, 2005, for a period of twenty-four months.

27. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

NONE

28. WRITTEN STAFF REPORT FOR BOARD INFORMATION

NONE

29. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

NONE

30. BOARD ACTIONS ON SUBMITTED ITEMS - (See Minutes - Page 25-26)

These items have been taken under submission by the State Personnel Board at a prior meeting. This list does not include evidentiary cases, as those cases are listed separately by category, under Evidentiary Cases.

31. INFORMATION BRIEFING ON THE CALIFORNIA PERFORMANCE REVIEW'S (CPR) WORKFORCE DEVELOPMENT TEAM – MARY S. FERNANDEZ

State Personnel Board staff has provided the leadership for the CPR Workforce Development Team since its inception in March of 2005. The team was chartered to address the void left with the closing of the State Training Center at the Department of Personnel Administration. Staff will outline the recommendations made in their report to the Governor's Office.

ACTION: Presentation postponed until a future date.

A D J O U R N M E N T

21. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting.

(1) **PATRICK BARBER, CASE NO. 04-0174PA**

Appeal from dismissal

Classification: Youth Correctional Counselor

Department: Department of the Youth Authority

Proposed decision adopted November 3, 2004
modifying dismissal to 45 calendar days suspension

Transcript prepared

Pending oral argument June 7, 2005, Sacramento

Oral argument continued

Oral argument heard July 13, 2005, Sacramento

Case ready for decision by FULL Board

NO ACTION

(2) **JON CHASE, CASE NO. 04-0392A**

Appeal from 30 working days suspension

Classification: Associate Management Auditor

Department: Employment Development Department

Proposed decision rejected April 19, 2005

Transcript prepared

Pending oral argument July 13, 2005, Sacramento

Oral argument continued

Oral argument heard August 9, 2005, Sacramento

Case ready for decision by FULL Board

NO ACTION

(3) JAMES MCAULEY, CASE NO. 04-1856A

Appeal from dismissal

Classification: Associate Transportation Engineer, Caltrans
(Registered)

Department: Department of Transportation

Proposed decision rejected March 8-9, 2005

Transcript prepared

Oral argument heard June 7, 2005, Sacramento

Case ready for decision by FULL Board

NO ACTION

B. CASES PENDING

ORAL ARGUMENTS

These cases were on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

**(1) INTERNATIONAL UNION OF OPERATING ENGINEERS,
UNIT 12, LOCALS 3, 12, 39, & 501, CASE NO. 04-0813A
[PSC File No. 04-002 (b)]**

Review of personal services contract for maintenance
and grounds keeping

Department: California Science Center

ACTION: SUBMITTED

(2) JOSEPH MARTINEZ, CASE NO. 04-2690a

Appeal from dismissal

Classification: Hospital Police Officer

Department: Department of Mental Health

ACTION: SUBMITTED

(3) ANDREW RUIZ, CASE NO. 04-2391A

Appeal from dismissal

Classification: Correctional Lieutenant

Department: Department of Corrections

ACTION: SUBMITTED

C. CHIEF COUNSEL RESOLUTIONS

On August 30, 2005, the Board took the following actions on the following cases presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye

(1) MARCUS GLENN, CASE NO. 03-1180

Appeal from dismissal

Classification: Pharmacy Technician

Department: Department of Veterans Affairs

ACTION: The Board issued a resolution denying appellant's request for an Order to Show Cause.

COURT REMANDS

(1) GWENETTE BACKOVICH, CASE NO. 02-4145

Appeal from dismissal

Classification: Officer, California Highway Patrol

Department: Department of California Highway Patrol

ACTION: The Board issued a resolution vacating the Board's prior decision and directing the parties to submit written briefs concerning the appropriate penalty to be imposed on appellant.

(2) JERALD ELLIOTT, CASE NO. 00-3394

Appeal from dismissal

Classification: Instructional Computing Consultant II

Department: San Diego State University (SDSU)

ACTION: The Board issued a resolution vacating the Board's prior decision in the case, and will issue a new decision.

STIPULATIONS

This stipulation was submitted to the Board for Board approval, pursuant to Government Code, section 18681.

(1) STEPHEN SCHOENTHALER, CASE NO. 05-0557

Appeal from one year suspension and demotion from Professor to Associate Professor

Classification: Professor

Department: California State University, Stanislaus

ACTION: The Board issued a resolution rejecting the ALJ's Proposed Decision denying the respondent's request for a continuance. The Board remanded the matter back to the ALJ.

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These were ALJ proposed decisions submitted to the Board for the first time.

On August 30, 2005, the Board took the following actions on the following cases presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye

(1) DENISE ALLEN, CASE NO. 05-0126

Appeal from 30 working days' suspension

Classification: Employment Program Representative

Department: Employment Development Department

ACTION: The Board adopted the ALJ's Proposed Decision sustaining the 30 working days' suspension.

(2) PATRICK BAHN, CASE NO. 04-3036

Appeal from medical transfer

Classification: Office Assistant (Typing)

Department: Department of Corrections

ACTION: The Board adopted the ALJ's Proposed Decision denying the appeal and sustaining the medical transfer.

(3) LINDA DEOS, CASE NO. 05-0434

Appeal from dismissal

Classification: Staff Counsel III (Specialist)

Department: Employment Development Department

ACTION: The Board rejected the ALJ's Proposed Decision modifying the dismissal to a six months suspension followed by a demotion from the position of Staff Counsel III (Specialist) to a Staff Counsel (Range D). The Board will hear the case itself.

(4) LELA (JOANN) FLORY, CASE NO. 04-2553

Appeal from five percent reduction in salary for 12 months

Classification: Telecommunications Systems Analyst II

Department: Department of General Services

ACTION: The Board adopted the findings of fact and conclusion of law contained in the ALJ's Proposed Decision, but modified the penalty to a five percent reduction in salary for six months.

- (5) **LAWRENCE GALES, SR., CASE NO. 05-0702E**
Appeal from denial of complaint of race discrimination
Classification: Vocational Instructor, Janitorial Services
(Correctional Facility)
Department: Department of Corrections
ACTION: The Board adopted the ALJ's Proposed Decision denying the appeal.
- (6) **LEON HILLIARD, CASE NO. 05-1171**
Appeal from five percent reduction in salary for ten months
Classification: Industrial Supervisor (Dairy)
Department: Prison Industry Authority
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the five percent reduction in salary for ten months.
- (7) **NICHOLAS KEY, CASE NO. 04-0498B**
Appeal from determination of back salary, benefits, and interest
Classification: Correctional Officer
Department: Department of Corrections
ACTION: The Board adopted the ALJ's Proposed Decision dismissing the appeal.
- (8) **RICHARD RIDDLE, CASE NO. 05-1602**
Appeal from formal reprimand
Classification: Correctional Lieutenant
Department: Department of Corrections
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the official reprimand.
- (9) **PAUL E. SATKOWSKI, CASE NO. 03-1910E**
Appeal from whistleblower retaliation
Classification: Investigator
Department: Department of Motor Vehicles
ACTION: The Board adopted the ALJ's Proposed Decision withdrawing the whistleblower retaliation complaint.
- (10) **MICHAEL G. YARBOROUGH, CASE NO. 05-0080**
Appeal from demotion and termination
Classification: Career Executive Assignment (CEA)
Department: Department of Corrections
ACTION: The Board adopted the ALJ's Proposed Decision granting the respondent's motion to dismiss the appeal.

Proposed Decisions Taken Under Submission At Prior Meeting

These would have been ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

- (11) **DELWIN BROWN, CASE NO. 04-1665R**
MARCEL BERRY, CASE NO. 04-1667R
STEVE CHIU, CASE NO. 04-1773R
LINDA BERSHELL-BRIDGES, CASE NO. 04-1777R
ROBERT DUTRA, CASE NO. 04-1800R
DANIEL TORRE, CASE NO. 04-1714R
Appeal from dismissal
Classification: Youth Correctional Officer, Youth Correctional Counselor and Senior Youth Correctional Counselor
Department: Department of the Youth Authority
ACTION: The Board adopted the ALJ's Proposed Decision revoking the dismissals.
- (12) **ISSAC VARGAS, CASE NO. 04-2282**
Appeal from suspension for 30 calendar days
Classification: Youth Correctional Counselor
Department: Department of Youth Authority
ACTION: The Board adopted the ALJ's Proposed Decision sustaining the 30 calendar days suspension with Member Harrigan dissenting.

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board voted to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

On August 30, 2005, the Board took the following actions on the following cases presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye

(1) LANA ANDREWS, CASE NO. 04-2797P

Appeal from 20 workdays suspension

Classification: Officer, California Highway Patrol

Department: Department of California Highway Patrol

ACTION: DENIED

(2) ERNESTINE FORREST, CASE NO. 04-0409P

Appeal from dismissal

Classification: Corporations Counsel

Department: Department of Corporations

ACTION: DENIED

(3) WAYNE MCKAY, CASE NO. 05-0298E

Complaint of whistleblower retaliation

Classification: Associate Programmer Analyst (Specialist)

Department: Water Resources Control Board

ACTION: DENIED

(4) PHYLLIS MCNEAL, CASE NO. 04-2273P

Appeal from five percent reduction in salary for 6 months

Classification: Parole Agent II, Adult Parole

Department: Department of Corrections

ACTION: DENIED

WHISTLEBLOWER NOTICE OF FINDINGS

The Board would have voted to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases were pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

On August 30, 2005, the Board took the following actions on the following cases presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye

(1) PATRICK BRASS, CASE NO. 04-1952A

Appeal from dismissal

Classification: Youth Correctional Counselor

Department: Department of the Youth Authority

Proposed decision rejected July 26, 2005

Pending transcript

NO ACTION

(2) GARY GARFINKEL, CASE NO. 98-3128RBA

Appeal for determination of back salary, benefits and interest

Classification: Deputy Attorney General IV

Department: Department of Justice

Proposed decision rejected July 13, 2005

Transcript prepared

Pending oral argument October 4-5, 2005, Sacramento

NO ACTION

(3) INTERNATIONAL UNION OF OPERATING ENGINEERS, UNIT 12, LOCALS 3, 12, 39, & 501, CASE NO. 04-0813A

[PSC File No. 04-002 (b)]

Review of personal services contract for maintenance and grounds keeping

Department: California Science Center

Proposed decision rejected June 21, 2005

Transcript prepared

Pending oral argument August 30, 2005, Los Angeles

ACTION: SUBMITTED

(4) JOSEPH MARTINEZ, CASE NO. 04- 2690A

Appeal from dismissal

Classification: Hospital Police Officer

Department: Department of Mental Health

Proposed decision rejected May 17, 2005

Transcript prepared

Pending oral argument August 30, 2005, Los Angeles

ACTION: SUBMITTED

(5) KIM RITTENHOUSE, CASE NOS. 03-3541A & 03-3542E

Appeal from denial of reasonable accommodation
and from constructive medical termination

Classification: Office Technician (General)

Department: Department of Fish and Game

Proposed decision rejected May 18, 2004

Pending transcript

NO ACTION

(6) ANDREW RUIZ, CASE NO. 04-2391A

Appeal from dismissal

Classification: Correctional Lieutenant

Department: Department of Corrections

Proposed decision rejected June 7, 2005

Transcript prepared

Pending oral argument August 30, 2005, Los Angeles

ACTION: SUBMITTED

(8) MARK SAMORA, CASE NO. 04-3091A

Appeal from dismissal

Classification: Instructional Technology Consultant

Department: California State University, Los Angeles

Proposed decision rejected July 13, 2005

Transcript prepared

Pending oral argument October 4-5, 2005, Sacramento

NO ACTION

23. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff.

WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

On August 30, 2005, the Board adopted as indicated below the following decisions presented by Laura M. Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye

- (1) SCOTT BARTOLOTTI, CASE NO. 04-2213**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; furnished inaccurate information and a negative employment record.
ACTION: DENIED
- (2) JUSTIN CANTRELL, CASE NO. 04-2576**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent information, furnished inaccurate information and had a negative employment record.
ACTION: DENIED
- (3) EUGENE CASTILLO, CASE NO. 04-1692**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and failure to comply with legal obligations.
ACTION: DENIED

- (4) **ADRIAN CHAVEZ, NO. 04-2095**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; had negative law enforcement contacts and an arrest/conviction record.
ACTION: DENIED
- (5) **WILLIAM COYA, CASE NO. 05-0413**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and a negative employment record.
ACTION: DENIED
- (6) **DEBRA DALTON, CASE NO. 04-1759**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and illegal drug usage.
ACTION: GRANT
- (7) **BRUCE FINISTER, CASE NO. 04-2099**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent information and furnished inaccurate information.
ACTION: DENIED
- (8) **MARTIN KLASSEN, CASE NO. 04-2210**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and failure to provide required documents.
ACTION: DENIED
- (9) **DAVID REYES, CASE NO. 04-1994**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; negative law enforcement contacts and an arrest/conviction record.
ACTION: DENIED
- (10) **ALEXIS RIOS, CASE NO. 04-1607**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability and illegal drug usage.
ACTION: DENIED

- (11) **KERRY RUCKERT-PARKS, CASE NO. 04-1990**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitting pertinent information and furnishing inaccurate information.
ACTION: DENIED
- (12) **RONNEL SMITH, CASE NO. 04-2001**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent information and furnished inaccurate information.
ACTION: DENIED
- (13) **ANTHONY STEBBINS, CASE NO. 04-1992**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; furnished inaccurate information, had negative law enforcement contacts and an arrest/conviction record.
ACTION: DENIED
- (14) **PENNY TAYLOR, CASE NO. 04-2877**
Classification: Public Safety Dispatcher II
Department: California Highway Patrol
Issue: Suitability; furnished inaccurate information, omitted pertinent information, negative employment record failure to comply with legal obligations.
ACTION: DENIED
- (15) **WILSON TYLER, CASE NO. 04-2002**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent information, furnished inaccurate information and had a negative employment record.
ACTION: DENIED
- (16) **SHANGA WILSON, CASE NO. 04-1606**
Classification: Correctional Officer
Department: Corrections
Issue: Suitability; omitted pertinent information and furnished inaccurate information.
ACTION: DENIED

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

These cases would have been heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board would have been presented recommendations by a Hearing Panel on each appeal.

NONE

**C. EXAMINATION APPEALS
MINIMUM QUALIFICATIONS
MERIT ISSUE COMPLAINTS**

These cases would have been heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board would have been presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

EXAMINATION APPEALS

NONE

MINIMUM QUALIFICATIONS

NONE

MERIT ISSUE COMPLAINTS

NONE

**D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS**

These cases would have been heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board would have been presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board would have been presented recommendations by Appeals Division staff for final decision on each request.

NONE

PETITIONS FOR REHEARING CASES

NONE

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)

Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

NO ACTION

3. TELEVISION SPECIALIST (SAFETY)

The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003.)

NO ACTION

4. HEARING – Personal Services Contract #04-03

Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

NO ACTION

5. HEARING

Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

NO ACTION

6. JAMES MCAULEY, CASE NO. 04-1856

Appeal from dismissal. Associate Transportation Engineer. Department of Transportation. (Oral argument held June 7, 2005.)

NO ACTION

7. HEARING – Personal Services Contract #05-03

Appeal of SEIU Local 1000 (CSEA) from the Executive Officer's February 16, 2005 Approval of a Contract for Information Technology Services between the California Department of Health Services (DHS) and IDNS, Inc. (Hearing held July 13, 2005)

NO ACTION

8. PATRICK BARBER, CASE NO. 04-0174A.

Appeal from dismissal. Youth Correctional Officer. Department of Youth Authority. (Oral Argument held July 13, 2005)

NO ACTION

9. JON CHASE, CASE NO. 04-0392A.

Appeal from 30 working days suspension. Associate Management Auditor. Employment Development Department. (Oral Argument held August 9, 2005)

NO ACTION

10. HEARING – PERSONAL SERVICES CONTRACT # 05-07

Appeal of Department of General Services (DGS) from the Executive Officer's April 22, 2005 Disapproval of a Proposed Three-Year Cost-Savings Contract with American Building Maintenance janitorial Services for Custodial Services for the Franchise Tax Board. (Hearing held August 9, 2005)

NO ACTION

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on August 30, 2005.

VOTE: Elkins, Tom, Alvarado, Harrigan, Sheehan – Aye

FLOYD D. SHIMOMURA
Executive Officer
California State Personnel Board